

Remarks

Claims 1, 4-27, 29, and 31-38 are pending in the application and stand rejected. Applicant respectfully requests reexamination and reconsideration of the case in light of the following remarks.

Rejection for Lack of Novelty

In the Office Action dated February 16, 2007, claims 1, 4-27, 29, and 31-38 were rejected under 35 U.S.C. § 102(a) and (e) as being anticipated by Boyce *et al.* (U.S. Patent Application 2002/0035401). The Examiner stated that Boyce *et al.* teaches a composite osteoimplant comprising bone-derived particles and polymers, wherein the composite is formable during or just prior to implantation. The Examiner stated that Boyce *et al.* anticipates claims 1, 4-27, 29, and 31-38.

Applicant filed a Response to the Office Action on May 16, 2007, along with a Declaration under 37 C.F.R. § 1.132, which clearly set out that the alleged anticipatory material in Boyce *et al.* was not invented by another. In the Advisory Action dated May 29, 2007, the Examiner stated that the Declaration failed to identify that the inventor is the inventor of the present application. Although the serial number of the present case is 10/735,135, the Declaration submitted on May 16, 2007, had a typographical error and inadvertently listed the serial number of the present case as being 10/935,135.

Therefore, Applicant hereby submits a new Declaration under 37 C.F.R. § 1.132, which lists the correct serial number and clearly sets out that the alleged anticipatory material in Boyce *et al.* was not invented by another. To the extent that this rejection may be applicable to the presently pending claims, it is obviated by the enclosed Declaration. Applicant, therefore, respectfully requests that the rejection be removed.

Double Patenting

Claims 1-38 stand provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 34-83 of co-pending U.S. patent application serial number 10/681,651 and over claims 51-116 of co-pending U.S. patent application serial number 10/639,912. Applicant respectfully defers further comment on this rejection until the claims of either application have been found to

be patentable.

Applicant, therefore, respectfully submits that the present case is in condition for allowance. A Notice to that effect is respectfully requested.

If, at any time, it appears that a phone discussion would be helpful, the undersigned would greatly appreciate the opportunity to discuss such issues at the Examiner's convenience. The undersigned can be contacted at (617) 248-5215.

Please charge any fees that may be required for the processing of this Response, or credit any overpayments, to our Deposit Account No. 03-1721.

Respectfully submitted,

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